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HAND DELIVERY

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
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Room TW-A325  
Washington, D.C. 20554

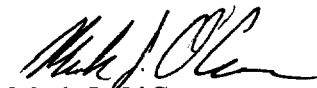
Re: Ex Parte Presentations/  
WT Dkt. No. 97-82; DA 99-332

Dear Ms. Salas:

This letter is to notify you that Mark Tauber and I met yesterday with Karen Gulick, Legal Advisor to Commissioner Tristani, to discuss Omnipoint Corporation's March 15 "Application for Review" concerning bid credits and participation in the upcoming Block C re-auction. The attached bullet-sheet, which was provided to Ms. Gulick, summarizes Omnipoint's position.

Please find attached three copies of this letter for inclusion in the above-referenced docket. Should you have any questions, please contact the undersigned.

Sincerely,



Mark J. O'Connor  
Counsel for Omnipoint Corporation

cc: Karen Gulick, Esq.

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## **Omnipoint -- Block C Re-Auction Bid Waiver Request**

- **All Other Significant Bidders (i.e., more than \$10 million upfront payment) In the Re-Auction, Except Omnipoint, Have A 25% Bid Discount.**
- **Omnipoint Is Denied The Same Bid Credit As Other Significant Bidders Only Because It Grew As An Entrepreneur.**
- **Absent the Delay of FCC's Block C Restructuring, Omnipoint Would Have Been Eligible For the Largest Bid Credit.**
- **Fairness Principle of Restructuring Orders Compels That FCC Allow Omnipoint To Participate With The Same Bid Credit As Other Significant Bidders.**

## **Omnipoint's Waiver Is Supported By The FCC's Objectives For Small Business Growth in PCS**

- **FCC's Rules Encourage Small Business Growth**

- **FCC's objectives are to :**
  - "encourage[ ] designated entities to grow, instead of penalizing them for success" (Fifth MO&O ¶ 125);
  - "increase likelihood that designated entities who win licenses in the auctions become strong competitor" (Fifth R&O, ¶ 98);
  - ensure that Block C Restructuring achieves "the statutory goal set forth in Section 309(j) that encourage[s] the rapid provision of service to the public." (Second R&O, ¶ 57).
- Section 24.709(a)(2) allows small businesses to maintain eligibility even as post-auction revenues rise due to "operations or other investments, business development or expanded service."
- PCS Transfer/Assignment rule, Section 24.839(d), likewise allows existing Block C licensees to qualify for additional licenses despite growth from PCS operations.

- **Unjust Enrichment Provisions Support Small Business Growth**

- **FCC has already clarified that unjust enrichment rules do not apply to licensee that qualified for full bid credit in the initial Block C auction.** Fifth MO&O, ¶ 126.
- **Unjust Enrichment, like all Entrepreneur Band rules, should work to *promote* small business participation and *not limit* small business growth. Omnipoint never suggested a "grandfathering exception."**
- **Part I Third R&O is fully consistent with the PCS unjust enrichment provision.**

## **Special Circumstances Justify A Waiver In This Case**

### **Omnipoint's Status Is a Consequence of the Delay From FCC's Restructuring Process**

- Without FCC intervention, default and re-auction would have occurred in 1996 or 1997, and Omnipoint would have had full bid credit.
- During delay, Omnipoint met FCC's mandate for service rollout -- only Block C operator in a top 25 American city (Philadelphia); Block F operator in Miami.
- Omnipoint should not be penalized for aggressive build-out.

### **Omnipoint is Uniquely Disadvantaged by in Auction #22 by the Fourth R&O decision**

- No Other Block C Auction Winner has grown in revenues to be impacted by order as Omnipoint.
- All significant bidders except Omnipoint have a 25% bid discount, even though such bidders have access to enormous capital via passive investor "partners".

**Re-Auction is the "Final Act" of the Restructuring Process, and the Promise to Treat Operational Licensees Fairly Must Now Be Met.**